because the stock is owned by a few stockholders, or even by one person.[20] The title to corporate property is still vested in the corporation so that it is the proper plaintiff in an action of replevin.[21] In an action relating to the property, the corporation is "the real party in interest."[22]

A recent New Jersey case illustrates the application of the entity theory to suits between members of a corporation. The plaintiff and the defendant organized two corporations to carry out the purposes of their copartnership. The stockholders and directors, apart from the plaintiff and the defendant, were only nominally interested in the concern. Upon a disagreement, the plaintiff sought an accounting of the partnership affairs in equity upon the theory that the corporations could be disregarded, since they had been formed as agents in the conduct of the partnership business. The court refused relief, holding that the parties must be treated as members of a corporation, and their rights and duties measured in terms of corporation law. *Jackson* v. *Hooper* (N. J. 1910) 75 Atl. 568. This decision is in accord with an earlier case of similar facts.[23] In applying the doctrine of the separate corporate entity to a suit between members of the corporation, the court is supported by the authorities;[24] and would seem to be justified by the reasoning in cases in which the rights of non-members were involved. The doctrine that the corporation is an entity distinct from the sum of its members being well settled, it is properly invoked against the claims of stockholders and directors, as well as in their favor: as well in controversies between members of the corporation, as in suits between the corporation, or a stockholder, and a creditor or other third party. To permit the use of the doctrine of the separate corporate entity by the stockholders to escape full individual liability for debts, without recognizing that the parties have assumed the duties as well as the rights of stockholders, could only work injustice. The principal case is accordingly correct in its recognition of the corporate entity in a controversy between stockholders.

THE RIGHTS OF A LANDOWNER INJURED BY BLASTING ON ADJOINING PREMISES.—The recognition of the doctrine of correlative rights between adjoining landowners was early compelled by "the necessities of the social state,"[1] but the development and application of the principle have been characterized by conflicting decisions. This conflict is well illustrated in the field of injuries caused by blasting operations, where the misleading doctrine of consequential injury has bred confusion. Admittedly, mere damage in fact is insufficient to support an action; some right must be infringed or duty violated, but in determining these rights and duties the courts have reached differing conclusions. In some jurisdictions the landowner's right to use and develop his land is viewed liberally. Thus, injury caused by vibration is non-actionable as *damnum absque injuria* unless accompanied

[20]Newton Mfg. Co. *v.* White (1871) 42 Ga. 148.

[21]Button *v.* Hoffman *supra.*

[22]Winona etc. Co. *v.* St. Paul etc. Co. (1877) 23 Minn. 359.

[23]Russell *v.* M'Lellan (Mass. 1833) 14 Pick. 63.

[24]Einstein *v.* Rosenfeld *supra; In re* George Newman & Co. *supra.*

[1]Booth *v.* Rome etc. Ry. Co. (1893) 140 N. Y. 267.

by a direct trespass,[2] or due to negligence,[3] or of sufficient duration and harmful effect to constitute a nuisance.[4] It is contended that any other results would concede an undue advantage to mere priority in land development and building operations.[1] This rule, however, seems too lenient and, obviously, its rigid application may often enable one landowner totally to destroy the beneficial use of his neighbor's property. Its manifest harshness, too, is only limited by the fact that a damaging explosion tends to prove negligence.[5]

Against this doctrine it may further be argued that under cover of the term consequential injury the possibility of invasion by intangible or invisible means is ignored. Although such means were doubtless little understood during the early development of the actions of Trespass and Case, modern science seems to compel their recognition. Invasion by an agent is possible, and occurs equally when something set in motion by a landowner lodges on another's premises with the aid of some natural law such as gravity, whether the intervening force operates below or above the surface. There seems little distinction between the case of a missile projected through the air and poisonous particles committed to the operation of gravity through percolating water.[6] In England, moreover, violent electric currents discharged into the land of another have been likened to a stream of water thrown thereon.[7] Of course, under this view many operations now lawful will involve actionable invasions. This objection is qualified, however, by the exigencies of proof in such cases for injury cannot be proved unless the origin of the force be clearly shown and its effect demonstrated.[7] This seems scarcely possible in the absence of a showing of actual damage. The only question in these cases is the form of remedy, and an action of trespass on the case seems clearly appropriate.

Many courts repudiate the doctrine of *Booth* v. *Rome etc. Ry. Co.*[1] by finding in injurious blasting operations a violation of the duty defined in *Rylands* v. *Fletcher;*[8] that a proprietor who allows upon his premises anything the natural consequences of the escape of which is damage to the property of others, maintains such things at his peril.[9] Such a use of land is deemed unnatural or unreasonable. This doctrine consequently embodies the theory that the reasonable user of land is the complement of the principle of correlative rights, and the adoption of this test seems as justifiable in these cases as in those of percolating waters. Although the doctrine of *Rylands* v.

[2]Booth *v.* Rome etc. Co. *supra;* Simon *v.* Henry (1898) 62 N. J. L. 486; Hay *v.* Cohoes Co. (1849) 2 N. Y. 159.

[3]Holland House etc. Co. *v.* Baird (1901) 169 N. Y. 136.

[4]Morton *v.* N. Y. (1893) 140 N. Y. 207; Heeg *v.* Licht (1880) 80 N. Y. 579.

[5]Kinney *v.* Koopman (1896) 116 Ala. 310.

[6]Ballard *v.* Tomlinson (1885) L. R. 29 Ch. Div. 115; Ball *v.* Nye (1868) 99 Mass. 582. Though these cases seem influenced by the doctrine of Rylands *v.* Fletcher *infra,* the comparison is drawn to illustrate the possibility of invisible and intangible invasion.

[7]Natl. Telephone Co. *v.* Baker L. R. [1893] 2 Ch. 186; *cf.* Cumberland etc. Co. *v.* Union etc. Co. (1894) 93 Tenn. 492; Joyce, Electric Law § 510.

[8](1866) L. R. 1 Exch. 265, affd. (1868) L. R. 3 H. L. 330.

[9]Fitsimmons *v.* Braun (1900) 94 Ill. App. 553, affd. (1902) 199 Ill. 390; Bradford *v.* St. Mary's etc. Co. (1899) 60 Oh. St. 560; Gossett *v.* Southern Ry. Co. (1905) 115 Tenn. 376; Colton *v.* Onderdonk (1886) 69 Cal. 155.

Fletcher has been criticised it seems unobjectionable if reasonableness is considered in determining the dangerous nature of things brought upon the land.[10] This accords with the conclusion reached in a recent case, *Hickey* v. *McCabe & Bihler* (R. I. 1910) 75 Atl. 404, where the plaintiff was allowed to recover for the injury to his property caused by vibration due to blasting on neighboring premises, although he showed no invasion of his premises by stones or dirt, or negligence in the conduct of the defendant's operations. This result, moreover, exposes the fallacy of the doctrine of consequential injury underlying the decision in *Booth* v. *Rome etc. Ry. Co.* If "consequential" is made synonymous with "non-actionable" its use is nominal and so begs the question for it obviously affords no test of a cause of action. On the other hand, if indirect injury is meant an action lies,[11] and the term consequently merely indicates that the action must be in Case rather than Trespass.

The rule of *Booth* v. *Rome etc. Ry. Co.* is open to further attack because of its disregard of the similarity between the injury caused by vibration and that caused by the removal of the support of land, by an adjacent owner. True, the right of support, lateral or subjacent, has thus far been held violated only where there has been a displacement of soil caused by a removal of land immediately adjoining.[12] Since, however, recovery is founded upon the natural right of an owner to have his land in its natural state supported by that of his neighbor, the displacement of soil by blasting, though accomplished in a slightly different manner and by somewhat unusual means, would nevertheless seem as much a disturbance of this right as the injury resulting from the actual removal of supporting earth. It is notable, too, that the disturbance of land, without actual invasion, by the removal of lateral support has been deemed a trespass, although the cases do not indicate clearly whether Trespass or Case is the appropriate remedy.[13]

DIVESTMENT OF PARTNERSHIP FIRM TITLE.—There resides in the partners of a going concern an undoubted right to divest firm title by ordinary business transactions,[1] or to assume and convert into firm debts the individual liabilities of a separate partner,[2] and a single partner can accomplish the same result by disposing of his interest in the business, to one or more of his co-partners or to a stranger, provided all the partners assent.[3] Because, however, of a rule of administration, developed in equity, and adopted in insolvency and bankruptcy proceedings, that partnership creditors shall be preferred in the distribution of firm assets, and separate creditors in separate assets, transfers of firm title effected on the eve of a situation calling for

[10]Bradford *v.* St. Mary's etc. Co. *supra.*

[11]Eaton *v.* B. C. & M. R. R. Co. (1872) 51 N. H. 504; *cf.* Wheeler *v.* Norton (N. Y. 1904) 92 App. Div. 368, and comment on the latter case in Derrick *v.* Kelly (1910) 120 N. Y. Supp. 966.

[12]Washburn, Real Property (6th ed.) §§ 1296, 1298.

[13]2 Dane, Abridgment 717; Mamer *v.* Lussen (1872) 65 Ill. 484; Buskirk *v.* Strickland (1882) 47 Mich 389.

[1]Mabbett *v.* White (1855) 12 N. Y. 442.

[2]Nordlinger *v.* Anderson (1890) 123 N. Y. 544; Meyers *v.* Tyson (1896) 2 Kan. App. 464.

[3]Bolton *v.* Pullen (1796) 1 Bos. & P. 539.